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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2015-0072]

RIN 0579-AE23

Importation of Tree Tomatoes From Ecuador Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruit and vegetable regulations to allow the importation of tree tomatoes from Ecuador into the continental United States. As a condition of entry, the tree tomatoes must be produced in accordance with a systems approach that includes requirements for importation in commercial consignments, registration and monitoring of places of production, field monitoring and pest control practices, trapping, and inspection for quarantine pests by the national plant protection organization of Ecuador. This action will allow the importation of tree tomatoes from Ecuador while continuing to protect against the introduction of plant pests into the United States.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, M.S., Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-83, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

In response to a request from the national plant protection organization (NPPO) of Ecuador, we prepared a pest risk assessment (PRA) to analyze the plant pest risks associated with the importation of tree tomato from Ecuador into the continental United States. The PRA identified four pests of quarantine significance present in Ecuador that could follow the pathway of tree tomatoes from Ecuador into the continental United States. They are:

Fruit Flies

- South American fruit fly (*Anastrepha fraterculus*)
- Mediterranean fruit fly (*Ceratitis capitata*)

Moth

- Tomato fruit borer (*Neoleucinodes elegantalis*)

Virus

- Tamarillo mosaic virus

Based on the findings of the PRA, we prepared a risk management document (RMD) to determine whether phytosanitary measures exist that would address the quarantine plant pest risk. The RMD described the phytosanitary measures required by this rule and provides evidence of their efficacy in preventing the introduction of the identified quarantine pests. Those measures will be applied as part of a systems approach to phytosanitary security.

On June 21, 2017, we published in the *Federal Register* (82 FR 28262-28266, Docket No. APHIS-2015-0072) a proposal¹ to amend the regulations to allow the importation of tree tomatoes from Ecuador into the continental United States under a systems approach that would include requirements for importation in commercial consignments, registration and monitoring of places of production, field monitoring and pest control practices, trapping, and inspection for quarantine pests by the NPPO of Ecuador.

We solicited comments concerning our proposal for 60 days ending August 21, 2017. We received five comments by that date, from private citizens and a State department of agriculture. Two commenters supported the action, while three opposed. The comments are discussed below.

One commenter noted that the PRA rated the fruit flies as high and the moth and virus as a medium for likelihood for introduction. The commenter stated that these pests have a wide host range, which include economically important hosts. Furthermore, the life stages and symptoms of these pests and disease could be difficult to detect during post-harvest and port-of-entry inspections. As such, the commenter recommended that shipments of tree tomato from Ecuador not be allowed into Florida.

We have determined, for the reasons described in the RMD, that the specified measures in the RMD will effectively mitigate the risks associated with the importation of tree tomato from Ecuador. Under the systems approach, biometric samples of tree tomato fruit must be inspected by the NPPO of Ecuador following any post-harvest processing and found free of *N. elegantalis* and Tamarillo mosaic virus. These inspections, in addition to other phytosanitary measures described in the RMD, will be sufficient to reduce the risk.

¹ To view the proposed rule, supporting documents, including the PRA and RMD, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0072>.

One commenter opposed the importation of tree tomatoes from Ecuador due to the risk of introduction of invasive species.

As a signatory of the World Trade Organization agreement on Sanitary and Phytosanitary Measures, the United States is obligated to consider requests from foreign governments for access to the U.S. market. We have considered the risks associated with the action and, based on the PRA and RMD, we have determined that the mitigation measures are effective to protect animal and plant health within the United States.

The same commenter stated that we needed to consider the economic effects this action would have on U.S. tomato growers.

As mentioned in the economic analysis, tree tomatoes are not commercially grown in the United States. Therefore, we have determined that this action will not have a significant economic impact on U.S. tomato producers.

One commenter stated that we cannot control the pesticides used by Ecuador on their products.

While the United States does not have direct control over pesticides that are used on food commodities in other countries such as tree tomatoes from Ecuador, there are regulations in the United States concerning the importation of food to ensure that commodities do not enter the United States containing illegal pesticide residues. Specifically, the Environmental Protection Agency (EPA) has the authority to establish, change, or cancel tolerances for food commodities through section 408 of the Federal Food, Drug, and Cosmetic Act. The EPA tolerance levels are enforced once the commodity enters the United States. Federal Government food inspectors are responsible for monitoring food commodities that enter the United States to confirm that

tolerance levels are not exceeded and that residues of pesticide chemicals that are banned in the United States, like DDT, are not present on the commodities.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

NOTE: In the proposed rule, the systems approach for tree tomato from Ecuador was designated as § 319.56-78; however, that section has since been utilized. Therefore, the systems approach will be added as § 319.56-83.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, because this rule is not significant, it does not trigger the requirements of Executive Order 13771.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov website (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

Tree tomatoes are not commercially grown in the United States. U.S. consumers will benefit from having Ecuador as a new source of fresh tree tomato fruit. Ecuador has approximately 40 tree tomato production sites, with a total growing area of 650 acres. They are served by a single packinghouse. In 2014 (most recent data available), Ecuador exported approximately 5.1 metric tons of fresh tree tomatoes to Germany, Canada, Spain, Holland, Italy, and Japan in more than 130 small shipments. Based on conversations with Ecuadorian officials,

we expect that initially there will be about 13 shipments of tree tomatoes from Ecuador, with a total volume of about 0.5 metric tons.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows fresh tree tomato to be imported into the continental United States from Ecuador. State and local laws and regulations regarding tree tomato imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this final rule, which were filed under 0579-0464, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the *Federal Register* providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-83 is added to read as follows:

§ 319.56-83 Tree tomatoes from Ecuador.

Fresh tree tomatoes (*Solanum betaceum* Cavanilles) may be imported into the continental United States from Ecuador only under the conditions of this systems approach described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Anastrepha fraterculus*, South American fruit fly; *Ceratitis capitata*, Mediterranean fruit fly; *Neoleucinodes elegantalis*, a moth; and the Tamarillo mosaic virus.

(a) *General requirements*—(1) *Operational workplan*. The national plant protection organization (NPPO) of Ecuador must provide an operational workplan to APHIS that details the activities that the NPPO of Ecuador will carry out to meet the requirements of this section. The operational workplan must be approved by APHIS and include and describe specific requirements as set forth in this section. APHIS will be directly involved with the NPPO of Ecuador in monitoring and auditing implementation of the systems approach.

(2) *Registered places of production*. Tree tomatoes considered for export to the continental United States must be produced at places of production that are registered with the NPPO of Ecuador.

(3) *Registered packinghouses*. Tree tomatoes must be packed for export to the continental United States in pest-exclusionary packinghouses that are registered with the NPPO of Ecuador.

(4) *Recordkeeping*. The NPPO of Ecuador must maintain all forms and documents related to export program activities in registered places of production and packinghouses for at least 1 year and provide them to APHIS upon request.

(5) *Identification*. The identity of each lot of tree tomatoes from Ecuador must be maintained throughout the export process, from the place of production until the tomatoes are released for entry into the continental United States. The means of identification that allows the lot to be traced back to the place of production in which it was produced, and the packinghouse in which it was packed, must be described in the operational workplan.

(6) *Commercial consignments*. Tree tomatoes from Ecuador may be imported in commercial consignments only.

(7) *Safeguarding*. Lots of tree tomatoes destined for export to the continental United States must be safeguarded during movement from registered places of production to registered packinghouses, and from registered packinghouses to arrival at the port of entry into the continental United States, as specified by the operational workplan.

(b) *Places of production requirements*. (1) Registered places of production of tree tomatoes destined for export to the continental United States must be determined by APHIS and the NPPO of Ecuador to be free from *A. fraterculus* and *C. capitata* based on trapping conducted in accordance with the operational workplan. If the flies per trap per day exceed levels specified in the operational workplan, the place of production will be prohibited from exporting tree tomatoes to the continental United States until APHIS and the NPPO of Ecuador jointly agree that the risk has been mitigated. The NPPO must keep records regarding the placement and monitoring of all traps, as well as records of all pest detections in these traps, for at least 1 year and provide the records to APHIS, upon request.

(2) Places of production must remove fallen tree tomato fruit in accordance with the operational workplan. Fallen fruit may not be included in field containers of fruit brought to the packinghouse to be packed for export.

(3) The NPPO of Ecuador must inspect fields at registered places of production at least once during the growing season for Tamarillo mosaic virus. Sites must be determined by the NPPO to be free of the virus as a result of these inspections.

(4) Starting 60 days before harvest and continuing throughout the shipping season, the NPPO of Ecuador must visit and inspect registered places of production monthly for signs of infestation. The NPPO of Ecuador must allow APHIS to monitor these inspections. The NPPO

of Ecuador must also certify to APHIS that registered places of production have effective fruit fly trapping programs and control guidelines in place to reduce pest populations.

(5) If APHIS or the NPPO of Ecuador determines that a registered place of production has failed to follow the requirements in this paragraph (b), the place of production will be excluded from the export program until APHIS and the NPPO of Ecuador jointly agree that the place of production has taken appropriate remedial measures to address the plant pest risk.

(c) *Packinghouse requirements.* (1) During the time registered packinghouses are in use for packing tree tomatoes for export to the continental United States, the packinghouse can only accept tree tomatoes that are from registered places of production and that are produced in accordance with this section.

(2) Tree tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, within 24 hours of harvest. These safeguards must remain intact until the tree tomatoes arrive in the United States, or the consignment will not be allowed to enter the United States.

(3) All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the tree tomatoes are packed.

(d) *Phytosanitary inspections.* A biometric sample of tree tomato fruit jointly agreed upon by the NPPO of Ecuador and APHIS must be inspected in Ecuador by the NPPO of Ecuador or officials authorized by the NPPO of Ecuador following post-harvest processing. The sample must be visually inspected for *N. elegantalis* and Tamarillo mosaic virus. A portion of the fruit must then be cut open and inspected for *A. fraterculus* and *C. capitata*.

(1) If *N. elegantalis* is found, the entire lot of fruit will be prohibited from import into the United States unless it is treated with an approved quarantine treatment monitored by APHIS.

(2) If Tamarillo mosaic virus is found, the entire lot of fruit will be prohibited from importation into the United States.

(3) If a single larva of *A. fraterculus* and *C. capitata* is found, the entire lot of fruit will be prohibited from importation to the United States and the place of production producing that fruit will be suspended from the export program until appropriate measures, as agreed upon by the NPPO of Ecuador and APHIS, have been taken.

(e) *Phytosanitary certificate*. Each consignment of fresh tree tomato fruit from Ecuador must be accompanied by a phytosanitary certificate, issued by the NPPO of Ecuador, that contains an additional declaration that the tomatoes were produced in accordance with the requirements of this section, and have been inspected and found free of *A. fraterculus*, *C. capitata*, *N. elegantalis*, and the Tamarillo mosaic virus.

(Approved by the Office of Management and Budget under control number 0579-0464)

Done in Washington, DC, this 29th day of May 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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